B. Public Trusts

1951 **File No.** 51

Legal Deptt.

B. BRANCH

K

Subject:—

L.A Bill no XXI of 1951

~~A Bill~~ to amend the Bombay Public Trusts Act, 1950

Bom Act XIV of 1951

P.B.E.

File No. B. Public Trusts /51

Gen. 194 e.

No. 6119
Legal Department,
Bombay Castle (Bombay No. 1), 16th April 1951

From
Shri J.R. Dhurandhar,
Secretary to the Government of Bombay,
Legal Department.

To
The Secretary to the Governor of Bombay.

Subject: The Bombay Public Trusts (Amendment) Bill, 1951.

Sir,

With reference to article 200 of the Constitution of India, I am directed to forward herewith for the assent of His Excellency the Governor the authentic copy of the Bombay Public Trusts (Amendment) Bill, 1951, which was read for thd third time and passed at the meetings of the Bombay Legislative Assembly and the Bombay Legislative Council held on the 29th and the 30 March 1951, respectively.

2. The subject-matter of the Bill falls under entires 3, 32, 64, and 66 in List II and entires 10, 28, 45, 46 and 47 in List III in the Seventh Schedule to the Constitution of India. As the Bill does not contain any provision repugnant to the provisions of any earlier law made by the Parliament or an existing law with respect to any of the matters enumerated in the Concurrent Legislative List, it is not necessary to reserve the Bill for the consideration of the President with reference to article 254(2) of the Constitution of India.

3. The date on which His Excellency the Governor's assent is given may kindly be entered in the endorsement.

4 ....

4. I also forward herewith one copy of each of the

1. Bill as introduced in the Bombay Legislative Assembly with the Statement of Objects and Reasons.	:	items Nos.
2. Bill as read for the third time and passed by the Bombay Legislative Assembly and as introduced in the Bombay Legislative Council.	:	1, 2 and 4
3. Bill as read for the third time and passed by the Bombay Legislative Council.	:	and two
4. Extracts from the proceedings of the Bombay Legislative Assembly dated the 28th and 29th March 1951 and of the Bombay Legislative Council dated the 30th March 1951.	:	copies of item

No. 3 of the papers noted in the margin. The Bill was not referred to a Select Committee.

Yours faithfully,

Sd/-

Secretary to Government.

No. G. S. 1078

.FROM

THE SECRETARY TO THE GOVERNOR OF BOMBAY

To

The Secretary to Government,
Legal Department.

GOVERNMENT HOUSE

BOMBAY, April 21, 1951.

Subject: The Bombay Public Trusts (Amendment) Bill, 1951.

Sir,

With reference to your letter No. 6119, dated April 16,1951, I am directed to return herewith the authentic copy of the Bombay Public Trusts (Amendment) Bill, 1951, with His Excellency the Governor's assent signified thereon.

Yours faithfully,

Sd/-

Secretary to the Governor or Bombay.

4 c.
V.R.K.
5/7/51

ACTS.

Publication of the Bombay Public Trusts (Amendment) Act, 1951.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 6538
Bombay Castle 24th April 1951.

Letter to the Secretary to the Governor, No. 6119, dated the 16th April 1951.

Letter from the Secretary to the Governor, No. G. S. No. 1078, dated the 21st April 1951.

"With reference to your letter No. 6119, dated April, 1951, I am directed to return herewith the authentic copy of the Bombay Public Trusts (Amendment) Bill, 1951 with His Excellency the Governor's assent signified thereon."

RESOLUTION: The law should be published as Bombay Act No. XIV of 1951, in the Bombay Government Gazette dated the 24th April 1951.

2. The Act should be translated into Marathi, Gujarathi, Kannada and Hindi (in Devnagari Script) and the translations should be published in the Bombay Government Gazette.

By order of the Governor of Bombay,

Sd/- (S. L. CHAUDHARI)

Deputy Secretary to Government

To
+ The Manager, Government Central Press, Bombay (with a copy of the Act and with a request that 50 Gazette copies of the Act may be forwarded to the Legal Department),

The Oriental Translator to Government)
The Bombay Legislature Department,) WITH A copy
The Director of Publicity, Bombay,) of the Act.
The Enquiry Officer for the Secretariat,)
Bombay.

+with four extra copies of the Act.

4 c.
V.R.K.
5/7/56

REGISTERED No. B-1

The
Bombay Government Gazette
PUBLISHED BY AUTHORITY
THURSDAY, 15TH MARCH 1951.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V

[To be translated into Marathi, Gujarati, Kannada and Hindi (in Devnagari Script) and the translations to be published in the "Bombay Government Gazette". The dates of publication to be reported.]

The following Bill is published under the proviso to rule 80 of the Bombay Legislative Assembly Rules :—

L. A. BILL No. XXI OF 1951.

A Bill to amend the Bombay Public Trusts Act, 1950.

Bom. XXIX of 1950. WHEREAS it is expedient to amend the Bombay Public Trusts Act, 1950, for the purposes hereinafter appearing ; It is hereby enacted as follows :—

1. This Act may be called the Bombay Public Trusts (Amendment) Act, 1951. Short title.

Bom. XXIX of 1950. 2. In section 2 of the Bombay Public Trusts Act, 1950 (hereinafter referred to as the said Act), in clause (13) after the words "a wakf", the words "a dharmada" shall be inserted. Amendment of section 2 of Bom. XXIX of 1950.

3. For section 4 of the said Act, the following shall be substituted, namely :— Amendment of section 4 of Bom. XXIX of 1950.

"4. The Charity Commissioner shall be a person,— Qualifications for appointment of Charity Commissioner.

(*a*) who is holding or has held a judicial office not lower in rank than that of a District Judge or a Judge of the Bombay City Civil Court, or the Chief Judge of the Presidency Small Cause Court, or

(*b*) who has been for not less than ten years,—

(*i*) an advocate enrolled under the Indian Bar Councils Act, 1926, XXXVIII of 1926.

(*ii*) an attorney of a High Court, or

(*iii*) a pleader enrolled under the Bombay Pleaders Act, 1920." Bom. XVII of 1920.

Amendment of section 5 of Bom. XXIX of 1950.

4. In section 5 of the said Act, for sub-section (*2*) the following shall be substituted, namely :—

"(*2*) A person to be appointed as a Deputy or Assistant Charity Commissioner shall be a person—

(*a*) who is holding or has held a judicial office not lower in rank than that of a Civil Judge (Senior Division) or a Judge of the Bombay City Civil Court or of the Presidency Small Cause Court, or

(*b*) who has been for not less than seven years,—

(*i*) an advocate enrolled under the Indian Bar Councils Act, 1926, XXXVIII of 1926.

(*ii*) an attorney of a High Court, or

(*iii*) a pleader enrolled under the Bombay Pleaders Act, 1920." Bom. XVII of 1920.

Amendment of section 18 of Bom. XXIX of 1950.

5. In section 18 of the said Act, to sub-section (*2*), the following shall be added at the end, namely :—

"or the trust property or substantial portion of the trust property is situated, as the case may be."

Amendment of section 19 of Bom. XXIX of 1950.

6. In section 19 of the said Act, for clause (*i*), the following shall be substituted, namely :—

"(*i*) whether a trust exists and whether such trust is a public trust,"

Amendment of sections 21 and 22 of Bom. XXIX of 1950.

7. In sub-section (*1*) of section 21 and in sub-section (*3*) of section 22 of the said Act, after the word "appeals" the words "or applications" shall be inserted.

Amendment of section 28 of Bom. XXIX of 1950.

8. In section 28 of the said Act, in sub-section (*1*)—

(*i*) for the words "the Schedule" the word and letter "Schedule A" shall be substituted ; and

(*ii*) for the words "the trust property or the substantial portion of the trust property is situate" the words "a public trust had been registered under any of the said enactments" shall be substituted.

Amendment of section 29 of Bom. XXIX of 1950.

9. In section 29 of the said Act,—

(*i*) after the words "testator's death" the words "whichever is earlier" shall be inserted, and

(*ii*) the following proviso shall be added at the end, namely :—

"Provided that the period prescribed herein for making an application for registration may, for sufficient cause, be extended by the Deputy or Assistant Charity Commissioner concerned."

Amendment of section 33 of Bom. XXIX of 1950.

10. In section 33 of the said Act, in sub-section (*2*), for the words and figures beginning with the words "who is the holder of certificate" and ending with the words "as auditors of companies" the words and figures "who is a chartered accountant within the meaning of the Chartered Accountants Act, 1949" shall be substituted, XXXVIII of 1949.

11. In section 44 of the said Act, in sub-section (*1*), for the word "or" where it occurs for the first time, the word "and" shall be substituted. Amendment of section 44 of Bom. XXIX of 1950.

12. In section 46 of the said Act,— Amendment of section 46 of Bom. XXIX of 1950.

(*i*) for the word "after" the words ", within a period of three months from the date of" shall be substituted; and

(*ii*) the following proviso shall be added at the end, namely :—

"Provided further that where, under any law for the time being in force, no probate or letters of administration are necessary for the administration of the estate of the testator, the executor or administrator, as the case may be, shall notify the contents of the will within the period of three months from the time when the contents of the will became known to him."

13. To section 52 of the said Act, the following proviso shall be added, namely :— Amendment of section 52 of Bom. XXIX of 1950.

"Provided that if on the date of the application of the Act to any public trust any legal proceedings in respect of such trust are pending before any court including the High Court to which the Advocate General or the Collector exercising the powers of the Advocate General is a party, the Charity Commissioner shall be deemed to be substituted in those proceedings for the Advocate General or the Collector, as the case may be, and such proceedings shall be disposed of by such Court."

14. In section 54 of the said Act,— Amendment of section 54 of Bom. XXIX of 1950.

(*i*) in sub-section (*1*), after the words "so charged or collected" the brackets and words "(in this Act called—"dharmada")" shall be inserted;

(*ii*) after sub-section (*3*), the following shall be added, namely :—

"(4) The provisions of Chapter IV shall not apply to dharmada."

15. In section 58 of the said Act,— Amendment of section 58 of Bom. XXIX of 1950.

(*1*) for the proviso the following shall be substituted, namely :—

"Provided that the contribution prescribed under this section shall,—

(*i*) in the case of a dharmada, be fixed at rates in proportion to the gross annual collection or receipts of the dharmada;

(*ii*) in the case of other public trusts, be fixed at rates in proportion to the gross annual income of such public trust."

(*2*) after the proviso so substituted, the following Explanation shall be added, namely :—

"*Explanation.*—For the purposes of this section, the gross annual income shall include gross income from all sources in a year excluding donations given or offerings made with a specific direction that they shall form part of the corpus of the public trust:

Provided that the interest or income accruing from such donations or offerings in the years following that in which they were given or made shall be taken into account in calculating the gross annual income."

Amendment of section 59 of Bom. XXIX of 1950.

16. In section 59 of the said Act, in sub-section (*1*), after the brackets and words "(other than the Charity Commissioner)" the words "or the person charging or collecting dharmada" shall be inserted.

Amendment of sections 61, 64 and 85 of Bom. XXIX of 1950.

17. In sections 61, 64 and 85 of the said Act, for the words "the Schedule" the word and letter "Schedule A" shall be substituted.

Amendment of section 66 of Bom. XXIX of 1950.

18. In section 66 of the said Act, in the Table, in the entry relating to section 59 in the second column, after the brackets and words "(other than the Charity Commissioner)" the words "or by a person charging or collecting dharmada" shall be inserted.

Amendment of section 72 of Bom. XXIX of 1950.

19. In section 72 of the said Act, in sub-section (*1*)—

(*i*) for the words "whether a trust is a public trust" the words "whether a trust exists and whether such trust is a public trust" shall be substituted;

(*ii*) the words and figures "under Chapter IV" shall be deleted.

Amendment of section 77 of Bom. XXIX of 1950.

20. In section 77 of the said Act and in the marginal note thereto for the word and figures "or 48" the figures, letters and word "48, 79A or 79C" shall be substituted.

Amendment of section 79 of Bom. XXIX of 1950.

21. In section 79 of the said Act—

(*1*) in sub-section (*1*), for the words "whether or not a trust is a public trust" the words "whether or not a trust exists and such trust is a public trust" shall be substituted;

(*2*) in sub-section (*2*),

(*i*) for the words "in appeal" where they occur for the second time the words "on application" shall be substituted;

(*ii*) the word "further" shall be deleted.

Insertion of new sections 79A, 79B, 79C and 79D in Bom. XXIX of 1950.

22. After section 79 of the said Act, the following new sections shall be inserted, namely:—

Recovery of costs and expenses incurred on legal proceedings by Charity Commissioner etc.

"79A. All costs, charges and expenses incurred by the Charity Commissioner, or the Deputy or Assistant Charity Commissioner as a party to, or in connection with, any legal proceeding in respect of any public trust shall, notwithstanding anything contained in section 79B, be payable out of the property or funds of the public trust, except in cases where the liability to pay the same has been laid on any party or other person personally and the right to reimbursement under this section has been negatived in express terms.

Costs of proceedings before Courts including High Court.

79B. The costs, charges and expenses of and incidental to any suit, appeal or application to any court including the High Court under this Act shall be in the discretion of the court, which may, subject to the provisions of section 79A, direct the whole or any part of such costs, charges and expenses to be met from the property or funds of the public trust concerned or to be borne and paid in such manner and by such persons as it thinks fit.

79C. The costs, charges and expenses of and incidental to any appeal, application or other proceeding before the Charity Commissioner or the Deputy or Assistant Charity Commissioner shall be in his discretion and he shall have full power to determine by whom or out of what property or funds and to what extent such costs, charges and expenses are to be paid. Costs of proceeding before Charity Commissioner etc.

VII of 1870. 79D. Notwithstanding anything contained in the Court-fees Act, 1870, the documents described in columns 1 and 2 of Schedule B hereto shall bear a court-fee stamp of the value specified in column 3 thereof". Court-fee to be paid as prescribed by Schedule B.

23. In the Schedule to the said Act, for the word "Schedule" the word and letter "Schedule A" shall be substituted and after Schedule A so relettered the following new Schedule shall be inserted, namely:— Amendment of the Schedule to, and insertion of new Schedule in, Bom. XXIX of 1950.

"SCHEDULE B

Section 1	Description of Document 2	Value 3
18(*1*)	Application for the registration of a public trust.	Rs. 2
22(*1*)	Report of any change or proposed change in any of the entries recorded in the register kept under section 17.	Re. 1
25(*1*)	Application of any person having interest in a public trust to the Charity Commissioner to determine which of the Deputy or Assistant Charity Commissioners shall proceed with an inquiry under section 19 or 22 in regard to any public trust.	Rs. 2
29	Application by the executor of a will for the registration of a public trust created by such will.	Rs. 2
36	Application for sanction of the Charity Commissioner for alienation of immovable property of a public trust.	Rs. 10
44	Application by the author of a public trust to the Charity Commissioner for his consent to act as trustee of the public trust.	Rs. 10
45	Application by a person intending to create a public trust to the Charity Commissioner for his consent to act as trustee of such trust.	Rs. 10
46	Communication by the executor of a will of a testator or the administrator of his estate notifying to the Charity Commissioner the contents of the will under which he has been appointed a trustee.	Rs. 10

Section	Description of Document	Value
1	2	3
47(*1*)	Application to the Court by the Charity Commissioner or any person having interest in a public trust for the appointment of a new trustee.	Rs. 10
47(*6*)	Appeal to the High Court from the decision of the court in application filed under sub-section (*1*) of section 47.	Rs. 10
51(*1*)	Application to the Charity Commissioner for consent to file a suit of the nature specified in section 50.	Rs. 10
59(*3*)	Appeal to the State Government against the order of the Charity Commissioner for the payment of contribution by a bank or person from the moneys standing to the credit of the public trust with such bank or person.	Rs. 10
70(*1*)	Appeal to the Charity Commissioner against the finding of Deputy or Assistant Charity Commissioner under section 20, 22 or 28 or order under sub-section (*3*) of section 54.	Rs. 10
71(*1*)	Appeal to the Bombay Revenue Tribunal against the decision of the Charity Commissioner refusing consent to the institution of a suit.	Rs. 10
72(*1*)	Application to the court against the decision of the Charity Commissioner under section 40, 41 or 70 or on the question whether a trust exists and whether such trust is a public trust or whether any property is the property of such trust.	Rs. 10
72(*4*)	Appeal to the High Court against the decision of the Court under sub-section (*2*) of section 72.	Rs. 10
	Mukhtarnama or Wakalatnama when presented for the conduct of any inquiry, appeal or other proceeding to the Charity Commissioner, or the Deputy or Assistant Charity Commissioner.	Re. 1
	Any other application or petition presented to the Charity Commissioner or the Deputy or Assistant Charity Commissioner.	Re. 1

STATEMENT OF OBJECTS AND REASONS.

On collecting the necessary information and data for the purposes of administering the Bombay Public Trusts Act, 1950, it has been found that it is necessary to amend the Act in certain respects. The important amendments are—

(1) the amendment of sections 4 and 5 (*2*) for the purpose of laying down additional alternative qualifications for the appointment of the Charity Commissioner and the Deputy and Assistant Charity Commissioners (*vide* clauses 3 and 4);

(2) the amendment of sections 54, 58 and 59 to provide for the payment of contributions by Dharmadas to the Public Trusts Administration Fund (*vide* clauses 14, 15 and 16);

(3) the insertion of new sections 79A, 79B and 79C with a view to providing for the recovery of costs and expenses incurred on legal proceedings by the Charity Commissioner and empowering the Courts including the High Court and Charity Commissioner and the Deputy and Assistant Charity Commissioner to award costs (*vide* clause 22);

(4) the insertion of new section 79D and Schedule B to provide for payment of *ad hoc* fees in respect of various applications, reports and other documents to be filed under the Act.

The following notes on clauses explain the other amendments :—

Clause 5.—This amendment is made with a view to provide against avoiding registration by a trustee of a public trust by shifting his office outside the State of Bombay.

Clause 6.—When the existence of the trust is disputed, it is not open to the Court to make an inquiry into its existence. Clause (*i*) of section 19 is, therefore, proposed to be substituted by a new clause so as to remove any doubt regarding the power of the Deputy or Assistant Charity Commissioner to decide questions whether a trust exists and whether such trust is a public trust.

Clause 7.—Under section 72 of the Act a person aggrieved by the decision of the Charity Commissioner has to make an application to the Court. The words "or applications" are being inserted after the word "appeals" in section 21 (*1*) and section 22 (*3*) as being necessary. A consequential change has been made in section 79.

Clause 8.—This amendment is made so as to avoid the decision on questions by the Assistant or Deputy Charity Commissioner whether a trust property is situated in a particular region or sub-region for the purposes of registering such trusts.

Clause 9.—Neither under section 29 of the Act nor under any other law, an executor of a will is required to take out probate of a will within any specified time. It is therefore possible for the executor to delay the registration of a public trust created by a will on the ground that he has not taken out the probate. The proposed amendment seeks to require the executor to make the application for registration within one month from the date on which the probate is granted or within six months from the date of the testator's death, whichever is earlier. The Charity Commissioner is, however, empowered to extend the time for making the application under the said section.

Clause 10.—This amendment is consequential to the amendment of section 144 of the Indian Companies Act, 1913 by the Chartered Accountants Act, 1948.

Clause 11.—This is a formal amendment.

Clause 12.—The amendment seeks to lay down a time limit of three months from the date of obtaining probate or letters of administration within which the contents of a will should be notified to the Charity Commissioner. Provision is also made for notifying the contents of the will in cases where no probate or letters of administration are required under any law.

Clause 13.—Section 52 of the Bombay Public Trusts Act, 1950, provides that the provisions of sections 92 and 93 of the Code of Civil Procedure, 1908, shall not apply to the public trusts. There is however no provision for substituting the name of the Charity Commissioner for that of the Advocate General or the Collector whose functions relating to public charities will come to an end on the application of the Act to such public trusts. It is considered that the absence of such a provision may create difficulties in the disposal of pending suits. Clause 13 of the Bill seeks to obviate such difficulties.

Clauses 14, 15 and 16.—These clauses provide for the contribution to the Public Trusts Administration Fund by a dharmada.

Clause 17.—This amendment is consequential to the insertion of new Schedule B which provides for *ad hoc* court fees.

Clause 18.—This clause provides for a penalty in case a trustee fails to contribute from a dharmada.

Clause 19.—This amendment is consequential to the amendment of clause (*i*) of section 19 (*1*). (Please see note on clause 6 above).

Clause 20.—This clause provides that costs, charges and expenses incurred on legal proceedings by the Charity Commissioner and costs of proceedings before the Charity Commissioner and the Deputy and Assistant Charity Commissioners shall, if not paid, be recovered as arrears of land revenue.

Clause 21.—This is consequential to amendment of sections 21 (*1*) and 22 (*3*) (*see* note on clause 7 above).

Clauses 22 and 23.—Section 79A proposed to be inserted provides for the recovery of cost, charges and expenses incurred by the Charity Commissioner, etc., in connection with the legal proceedings. Sections 79B and 79C proposed to be inserted empower a court or the Charity Commissioner or the Deputy or the Assistant Charity Commissioner to determine by whom, out of what property and to what extent cost, charges and expenses of any suit, appeal or application are to be paid.

New section 79D and Schedule B provide for payment for court-fee on various applications, reports and other documents to be filed under the Act.

(Signed) D. N. DESAI.

Dated the 14th March 1951.

By order of the Governor of Bombay,

J. R. DHURANDHAR,
Secretary to the Government of Bombay,
Legal Department.

Bombay, dated the 15th March 1951.

BOMBAY: PRINTED AT THE GOVERNMENT CENTRAL PRESS.

L. A. BILL No. XXI OF 1951.

A Bill to amend the Bombay Public Trusts Act, 1950.

(As read for the third time and passed by the Legislative Assembly on the 29th March 1951.)

Bom. XXIX of 1950.

WHEREAS it is expedient to amend the Bombay Public Trusts Act, 1950, for the purposes hereinafter appearing; It is hereby enacted as follows:—

Short title.

1. This Act may be called the Bombay Public Trusts (Amendment) Act, 1951.

Bom. XXIX of 1950.

Amendment of section 2 of Bom. XXIX of 1950.

2. In section 2 of the Bombay Public Trusts Act, 1950 (hereinafter referred to as the said Act), in clause (13) after the words "a wakf", the words "a dharmada" shall be inserted.

Amendment of section 4 of Bom. XXIX of 1950.

3. For section 4 of the said Act, the following shall be substituted, namely :—

Qualifications for appointment of Charity Commissioner.

"4. The Charity Commissioner shall be a person,—

(*a*) who is holding or has held a judicial office not lower in rank than that of a District Judge or a Judge of the Bombay City Civil Court, or the Chief Judge of the Presidency Small Cause Court, or

MO-1 Bk Hb 600—1

(*b*) who has been for not less than ten years,—
(*i*) an advocate enrolled under the Indian Bar Councils Act, 1926, XXXVIII of 1926.
(*ii*) an attorney of a High Court, or
(*iii*) a pleader enrolled under the Bombay Pleaders Act, 1920." Bom. XVII of 1920.

Amendment of section 5 of Bom. XXIX of 1950.

4. In section 5 of the said Act, for sub-section (*2*) the following shall be substituted, namely :—

"(*2*) A person to be appointed as a Deputy or Assistant Charity Commissioner shall be a person—

(*a*) who is holding or has held a judicial office not lower in rank than that of a Civil Judge (Senior Division) or a Judge of the Bombay City Civil Court or of the Presidency Small Cause Court, or

(*b*) who has been for not less than seven years,— XXXVIII of 1926.
(*i*) an advocate enrolled under the Indian Bar Councils Act, 1926,
(*ii*) an attorney of a High Court, or
(*iii*) a pleader enrolled under the Bombay Pleaders Act, 1920." Bom. XVII of 1920.

Amendment of section 18 of Bom. XXIX of 1950.

5. In section 18 of the said Act, to sub-section (*2*), the following shall be added at the end, namely :—

"or the trust property or substantial portion of the trust property is situated, as the case may be."

Amendment of section 19 of Bom. XXIX of 1950.

6. In section 19 of the said Act, for clause (*i*), the following shall be substituted, namely :—

"(*i*) whether a trust exists and whether such trust is a public trust,"

Amendment of sections 21 and 22 of Bom. XXIX of 1950.

7. In sub-section (*1*) of section 21 and in sub-section (*3*) of section 22 of the said Act, after the word "appeals" the words "or applications" shall be inserted.

Amendment of section 28 of Bom. XXIX of 1950.

8. In section 28 of the said Act, in sub-section (*1*)—

(*i*) for the words "the Schedule" the word and letter "Schedule A" shall be substituted ; and

(*ii*) for the words "the trust property or the substantial portion of the trust property is situate" the words "a public trust had been registered under any of the said enactments" shall be substituted.

Amendment of section 29 of Bom. XXIX of 1950.

9. In section 29 of the said Act,—

(*i*) after the words "testator's death" the words "whichever is earlier" shall be inserted, and

(*ii*) the following proviso shall be added at the end, namely :—

"Provided that the period prescribed herein for making an application for registration may, for sufficient cause, be extended by the Deputy or Assistant Charity Commissioner concerned."

Amendment of section 33 of Bom. XXIX of 1950.

10. In section 33 of the said Act, in sub-section (*2*), for the words and figures beginning with the words "who is the holder of certificate" and ending with the words "as auditors of companies" the words and figures "who is a chartered accountant within the meaning of the Chartered Accountants Act, 1949" shall be substituted. XXXVIII of 1949.

Amendment of section 59 of Bom. XXIX of 1950.

16. In section 59 of the said Act, in sub-section (*1*), after the brackets and words "(other than the Charity Commissioner)" the words "or the person charging or collecting dharmada" shall be inserted.

Amendment of sections 61, 64 and 85 of Bom. XXIX of 1950.

17. In sections 61, 64 and 85 of the said Act, for the words "the Schedule", the word and letter "Schedule A" shall be substituted.

Amendment of section 66 of Bom. XXIX of 1950.

18. In section 66 of the said Act, in the Table, in the entry relating to section 59 in the second column, after the brackets and words "(other than the Charity Commissioner)" the words "or by a person charging or collecting dharmada" shall be inserted.

Amendment of section 72 of Bom. XXIX of 1950.

19. In section 72 of the said Act, in sub-section (*1*)—

(*i*) for the words "whether a trust is a public trust" the words "whether a trust exists and whether such trust is a public trust" shall be substituted;

(*ii*) the words and figures "under Chapter IV" shall be deleted.

Amendment of section 77 of Bom. XXIX of 1950.

20. In section 77 of the said Act and in the marginal note thereto for the word and figures "or 48" the figures, letters and word "48, 79A or 79C" shall be substituted.

Amendment of section 79 of Bom. XXIX of 1950.

21. In section 79 of the said Act—

(*1*) in sub-section (*1*), for the words "whether or not a trust is a public trust" the words "whether or not a trust exists and such trust is a public trust" shall be substituted;

(*2*) in sub-section (*2*),

(*i*) for the words "in appeal" where they occur for the second time the words "on application" shall be substituted;

(*ii*) the word "further" shall be deleted.

Insertion of new sections 79A, 79B, 79C and 79D in Bom. XXIX of 1950.

22. After section 79 of the said Act, the following new sections shall be inserted, namely:—

Recovery of costs and expenses incurred on legal proceedings by Charity Commissioner etc.

"79A. All costs, charges and expenses incurred by the Charity Commissioner, or the Deputy or Assistant Charity Commissioner as a party to, or in connection with, any legal proceeding in respect of any public trust shall, notwithstanding anything contained in section 79B, be payable out of the property or funds of the public trust, except in cases where the liability to pay the same has been laid on any party or other person personally and the right to reimbursement under this section has been negatived in express terms.

Costs of proceedings before Courts including High Court.

79B. The costs, charges and expenses of and incidental to any suit, appeal or application to any court including the High Court under this Act shall be in the discretion of the court, which may, subject to the provisions of section 79A, direct the whole or any part of such costs, charges and expenses to be met from the property or funds of the public trust concerned or to be borne and paid in such manner and by such persons as it thinks fit.

11. In section 44 of the said Act, in sub-section (*1*), for the word "or" where it occurs for the first time, the word "and" shall be substituted. Amendment of section 44 of Bom. XXIX of 1950.

12. In section 46 of the said Act,— Amendment of section 46 of Bom. XXIX of 1950.

(*i*) for the word "after" the words ", within a period of three months from the date of" shall be substituted; and

(*ii*) the following proviso shall be added at the end, namely:—

"Provided further that where, under any law for the time being in force, no probate or letters of administration are necessary for the administration of the estate of the testator, the executor or administrator, as the case may be, shall notify the contents of the will within the period of three months from the time when the contents of the will became known to him."

13. To section 52 of the said Act, the following proviso shall be added, namely:— Amendment of section 52 of Bom. XXIX of 1950.

"Provided that if on the date of the application of the Act to any public trust any legal proceedings in respect of such trust are pending before any court including the High Court to which the Advocate General or the Collector exercising the powers of the Advocate General is a party, the Charity Commissioner shall be deemed to be substituted in those proceedings for the Advocate General or the Collector, as the case may be, and such proceedings shall be disposed of by such Court."

14. In section 54 of the said Act,— Amendment of section 54 of Bom. XXIX of 1950.

(*i*) in sub-section (*1*), after the words "so charged or collected" the brackets and words "(in this Act called—"dharmada")" shall be inserted;

(*ii*) after sub-section (*3*), the following shall be added, namely:—

"(4) The provisions of Chapter IV shall not apply to dharmada."

15. In section 58 of the said Act,— Amendment of section 58 of Bom. XXIX of 1950.

(*1*) for the proviso the following shall be substituted, namely:—

"Provided that the contribution prescribed under this section shall,—

(*i*) in the case of a dharmada, be fixed at rates in proportion to the gross annual collection or receipts of the dharmada;

(*ii*) in the case of other public trusts, be fixed at rates in proportion to the gross annual income of such public trust."

(2) after the proviso so substituted, the following Explanation shall be added, namely:—

"*Explanation.*—For the purposes of this section, the gross annual income shall include gross income from all sources in a year excluding donations given or offerings made with a specific direction that they shall form part of the corpus of the public trust:

Provided that the interest or income accruing from such donations or offerings in the years following that in which they were given or made shall be taken into account in calculating the gross annual income."

79C. The costs, charges and expenses of and incidental to any appeal, application or other proceeding before the Charity Commissioner or the Deputy or Assistant Charity Commissioner shall be in his discretion and he shall have full power to determine by whom or out of what property or funds and to what extent such costs, charges and expenses are to be paid. Costs of proceeding before Charity Commissioner etc.

79D. Notwithstanding anything contained in the Court-fees Act, 1870, the documents described in columns 1 and 2 of Schedule B hereto shall bear a court-fee stamp of the value specified in column 3 thereof". Court-fee to be paid as prescribed by Schedule B.

VII of 1870.

23. In the Schedule to the said Act, for the word "Schedule" the word and letter "Schedule A" shall be substituted and after Schedule A so relettered the following new Schedule shall be inserted, namely:— Amendment of the Schedule to, and insertion of new Schedule in, Bom. XXIX of 1950.

"SCHEDULE B.

Section	Description of Document	Value
1	2	3
18(*1*)	Application for the registration of a public trust.	Rs. 2
22(*1*)	Report of any change or proposed change in any of the entries recorded in the register kept under section 17.	Re. 1
25(*1*)	Application of any person having interest in a public trust to the Charity Commissioner to determine which of the Deputy or Assistant Charity Commissioners shall proceed with an inquiry under section 19 or 22 in regard to any public trust.	Rs. 2
29	Application by the executor of a will for the registration of a public trust created by such will.	Rs. 2
36	Application for sanction of the Charity Commissioner for alienation of immovable property of a public trust.	Rs. 10
44	Application by the author of a public trust to the Charity Commissioner for his consent to act as trustee of the public trust.	Rs. 10
45	Application by a person intending to create a public trust to the Charity Commissioner for his consent to act as trustee of such trust.	Rs. 10
46	Communication by the executor of a will of a testator or the administrator of his estate notifying to the Charity Commissioner the contents of the will under which he has been appointed a trustee.	Rs. 10

Section	Description of Document	Value
1	2	3
47(*1*)	Application to the Court by the Charity Commissioner or any person having interest in a public trust for the appointment of a new trustee.	Rs. 10
47(*6*)	Appeal to the High Court from the decision of the court in application filed under sub-section (*1*) of section 47.	Rs. 10
51(*1*)	Application to the Charity Commissioner for consent to file a suit of the nature specified in section 50.	Rs. 10
59(3)	Appeal to the State Government against the order of the Charity Commissioner for the payment of contribution by a bank or person from the moneys standing to the credit of the public trust with such bank or person.	Rs. 10
70(*1*)	Appeal to the Charity Commissioner against the finding of Deputy or Assistant Charity Commissioner under section 20, 22 or 28 or order under sub-section (*3*) of section 54.	Rs. 10
71(*1*)	Appeal to the Bombay Revenue Tribunal against the decision of the Charity Commissioner refusing consent to the institution of a suit.	Rs. 10
72(*1*)	Application to the court against the decision of the Charity Commissioner under section 40, 41 or 70 or on the question whether a trust exists and whether such trust is a public trust or whether any property is the property of such trust.	Rs. 10
72(*4*)	Appeal to the High Court against the decision of the Court under sub-section (*2*) of section 72.	Rs. 10
	Mukhtarnama or Wakalatnama when presented for the conduct of any inquiry, appeal or other proceeding to the Charity Commissioner, or the Deputy or Assistant Charity Commissioner.	Re. 1
	Any other application or petition presented to the Charity Commissioner or the Deputy or Assistant Charity Commissioner.	Re. 1

STATEMENT OF OBJECTS AND REASONS.

On collecting the necessary information and data for the purposes of administering the Bombay Public Trusts Act, 1950, it has been found that it is necessary to amend the Act in certain respects. The important amendments are—

(1) the amendment of sections 4 and 5 (*2*) for the purpose of laying down additional alternative qualifications for the appointment of the Charity Commissioner and the Deputy and Assistant Charity Commissioners (*vide* clauses 3 and 4);

(2) the amendment of sections 54, 58 and 59 to provide for the payment of contributions by dharmadas to the Public Trusts Administration Fund (*vide* clauses 14, 15 and 16);

(3) the insertion of new sections 79A, 79B and 79C with a view to providing for the recovery of costs and expenses incurred on legal proceedings by the Charity Commissioner and empowering the Courts including the High Court and Charity Commissioner and the Deputy and Assistant Charity Commissioner to award costs (*vide* clause 22);

(4) the insertion of new section 79D and Schedule B to provide for payment of *ad hoc* fees in respect of various applications, reports and other documents to be filed under the Act.

The following notes on clauses explain the other amendments :—

Clause 5.—This amendment is made with a view to provide against avoiding registration by a trustee of a public trust by shifting his office outside the State of Bombay.

Clause 6.—When the existence of the trust is disputed, it is not open to the Court to make an inquiry into its existence. Clause (*i*) of section 19 is, therefore, proposed to be substituted by a new clause so as to remove any doubt regarding the power of the Deputy or Assistant Charity Commissioner to decide questions whether a trust exists and whether such trust is a public trust.

Clause 7.—Under section 72 of the Act a person aggrieved by the decision of the Charity Commissioner has to make an application to the Court. The words "or applications" are being inserted after the word "appeals" in section 31 (*1*) and section 22 (*3*) as being necessary. A consequential change has been made in section 79.

Clause 8.—This amendment is made so as to avoid the decision on questions by the Assistant or Deputy Charity Commissioner whether a trust property is situated in a particular region or sub-region for the purposes of registering such trusts.

Clause 9.—Neither under section 29 of the Act nor under any other law, an executor of a will is required to take out probate of a will within any specified time. It is therefore possible for the executor to delay the registration of a public trust created by a will on the ground that he has not taken out the probate. The proposed amendment seeks to require the executor to make the application for registration within one month from the date on which the probate is granted or within six months from the date of the testator's death, whichever is earlier. The Charity Commissioner is, however, empowered to extend the time for making the application under the said section.

Clause 10.—This amendment is consequential to the amendment of section 144 of the Indian Companies Act, 1913, by the Chartered Accountants Act, 1949.

Clause 11.—This is a formal amendment.

Clause 12.—The amendment seeks to lay down a time limit of three months from the date of obtaining probate or letters of administration within which the contents of a will should be notified to the Charity Commissioner. Provision is also made for notifying the contents of the will in cases where no probate or letters of administration are required under any law.

Clause 13.—Section 52 of the Bombay Public Trusts Act, 1950, provides that the provisions of sections 92 and 93 of the Code of Civil Procedure, 1908, shall not apply to the public trusts. There is however no provision for substituting the name of the Charity Commissioner for that of the Advocate General or the Collector whose functions relating to public charities will come to an end on the application of the Act to such public trusts. It is considered that the absence of such a provision may create difficulties in the disposal of pending suits. Clause 13 of the Bill seeks to obviate such difficulties.

Clauses 14, 15 and 16.—These clauses provide for the contribution to the Public Trusts Administration Fund by a dharmada.

Clause 17.—This amendment is consequential to the insertion of new Schedule B which provides for *ad hoc* court fees.

Clause 18.—This clause provides for a penalty in case a trustee fails to contribute from a dharmada.

Clause 19.—This amendment is consequential to the amendment of clause (*i*) of section 19 (*1*). (Please see note on clause 6 above).

Clause 20.—This clause provides that costs, charges and expenses incurred on legal proceedings by the Charity Commissioner and costs of proceedings before the Charity Commissioner and the Deputy and Assistant Charity Commissioners shall, if not paid, be recovered as arrears of land revenue.

Clause 21.—This is consequential to amendment of sections 21 (*1*) and 22 (*3*) (*see* note on clause 7 above).

Clauses 22 and 23.—Section 79A proposed to be inserted provides for the recovery of cost, charges and expenses incurred by the Charity Commissioner, etc., in connection with the legal proceedings. Sections 79B and 79C proposed to be inserted empower a court or the Charity Commissioner or the Deputy or the Assistant Charity Commissioner to determine by whom, out of what property and to what extent cost, charges and expenses of any suit, appeal or application are to be paid.

New section 79D and Schedule B provide for payment for court-fee on various applications, reports and other documents to be filed under the Act.

D. N. DESAI.

Dated the 14th March 1951.

Government of Bombay

LEGAL DEPARTMENT

[L. A. BILL No. XXI OF 1951.]

(As read for the third time and passed by the Legislative Assembly on the 29th March 1951.)

A Bill to amend the Bombay Public Trusts Act, 1950.

[Shri D. N. Desai, M.L.A.]

M-1 Bk Hb 600—2

BOMBAY: PRINTED AT THE GOVERNMENT CENTRAL PRESS.

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L. A. BILL No. XXI OF 1951.

A Bill to amend the Bombay Public Trusts Act, 1950.

(As read for the third time and passed by the Legislative Assembly on the 29th March 1951.)

(As read for the third time and passed by the Legislative Council on the 30th March 1951.)

Bom. XXIX of 1950.

WHEREAS it is expedient to amend the Bombay Public Trusts Act, 1950, for the purposes hereinafter appearing ; It is hereby enacted as follows :—

1. This Act may be called the Bombay Public Trusts (Amendment) Act, 1951. Short title.

Bom. XXIX of 1950.

2. In section 2 of the Bombay Public Trusts Act, 1950 (hereinafter referred to as the said Act), in clause (13) after the words "a wakf", the words "a dharmada" shall be inserted. Amendment of section 2 of Bom. XXIX of 1950.

3. For section 4 of the said Act, the following shall be substituted, namely :— Amendment of section 4 of Bom. XXIX of 1950.

"4. The Charity Commissioner shall be a person,— Qualifications for appointment of Charity Commissioner.

(*a*) who is holding or has held a judicial office not lower in rank than that of a District Judge or a Judge of the Bombay City Civil Court, or the Chief Judge of the Presidency Small Cause Court, or

Mo-I Bk Mb 10—1

(*b*) who has been for not less than ten years,—

(*i*) an advocate enrolled under the Indian Bar Councils Act, 1926, XXXVIII of 1926.

(*ii*) an attorney of a High Court, or

(*iii*) a pleader enrolled under the Bombay Pleaders Act, 1920." Bom. XVII of 1920.

Amendment of section 5 of Bom. XXIX of 1950.

4. In section 5 of the said Act, for sub-section (*2*) the following shall be substituted, namely :—

"(*2*) A person to be appointed as a Deputy or Assistant Charity Commissioner shall be a person—

(*a*) who is holding or has held a judicial office not lower in rank than that of a Civil Judge (Senior Division) or a Judge of the Bombay City Civil Court or of the Presidency Small Cause Court, or

(*b*) who has been for not less than seven years,— XXXVIII of 1926.

(*i*) an advocate enrolled under the Indian Bar Councils Act, 1926,

(*ii*) an attorney of a High Court, or

(*iii*) a pleader enrolled under the Bombay Pleaders Act, 1920." Bom. XVII of 1920.

Amendment of section 18 of Bom. XXIX of 1950.

5. In section 18 of the said Act, to sub-section (*2*), the following shall be added at the end, namely :—

"or the trust property or substantial portion of the trust property is situated, as the case may be."

Amendment of section 19 of Bom. XXIX of 1950.

6. In section 19 of the said Act, for clause (*i*), the following shall be substituted, namely :—

"(*i*) whether a trust exists and whether such trust is a public trust,"

Amendment of sections 21 and 22 of Bom. XXIX of 1950.

7. In sub-section (*1*) of section 21 and in sub-section (*3*) of section 22 of the said Act, after the word "appeals" the words "or applications" shall be inserted.

Amendment of section 28 of Bom. XXIX of 1950.

8. In section 28 of the said Act, in sub-section (*1*)—

(*i*) for the words "the Schedule" the word and letter "Schedule A" shall be substituted ; and

(*ii*) for the words "the trust property or the substantial portion of the trust property is situate" the words "a public trust had been registered under any of the said enactments" shall be substituted.

Amendment of section 29 of Bom. XXIX of 1950.

9. In section 29 of the said Act,—

(*i*) after the words "testator's death" the words "whichever is earlier" shall be inserted, and

(*ii*) the following proviso shall be added at the end, namely :—

"Provided that the period prescribed herein for making an application for registration may, for sufficient cause, be extended by the Deputy or Assistant Charity Commissioner concerned."

Amendment of section 33 of Bom. XXIX of 1950.

10. In section 33 of the said Act, in sub-section (*2*), for the words and figures beginning with the words "who is the holder of certificate", and ending with the words "as auditors of companies" the words and figures "who is a chartered accountant within the meaning of the Chartered Accountants Act, 1949" shall be substituted. XXXVIII of 1949.

11. In section 44 of the said Act, in sub-section (*1*), for the word "or" where it occurs for the first time, the word "and" shall be substituted. Amendment of section 44 of Bom. XXIX of 1950.

12. In section 46 of the said Act,— Amendment of section 46 of Bom. XXIX of 1950.

(*i*) for the word "after" the words ", within a period of three months from the date of" shall be substituted; and

(*ii*) the following proviso shall be added at the end, namely:—

"Provided further that where, under any law for the time being in force, no probate or letters of administration are necessary for the administration of the estate of the testator, the executor or administrator, as the case may be, shall notify the contents of the will within the period of three months from the time when the contents of the will became known to him."

13. To section 52 of the said Act, the following proviso shall be added, namely:— Amendment of section 52 of Bom. XXIX of 1950.

"Provided that if on the date of the application of the Act to any public trust any legal proceedings in respect of such trust are pending before any court including the High Court to which the Advocate General or the Collector exercising the powers of the Advocate General is a party, the Charity Commissioner shall be deemed to be substituted in those proceedings for the Advocate General or the Collector, as the case may be, and such proceedings shall be disposed of by such Court."

14. In section 54 of the said Act,— Amendment of section 54 of Bom. XXIX of 1950.

(*i*) in sub-section (*1*), after the words "so charged or collected" the brackets and words "(in this Act called—"dharmada")" shall be inserted;

(*ii*) after sub-section (*3*), the following shall be added, namely:—

"(4) The provisions of Chapter IV shall not apply to dharmada."

15. In section 58 of the said Act,— Amendment of section 58 of Bom. XXIX of 1950.

(*1*) for the proviso the following shall be substituted, namely:—

"Provided that the contribution prescribed under this section shall,—

(*i*) in the case of a dharmada, be fixed at rates in proportion to the gross annual collection or receipts of the dharmada;

(*ii*) in the case of other public trusts, be fixed at rates in proportion to the gross annual income of such public trust."

(*2*) after the proviso so substituted, the following Explanation shall be added, namely:—

"*Explanation.*—For the purposes of this section, the gross annual income shall include gross income from all sources in a year excluding donations given or offerings made with a specific direction that they shall form part of the corpus of the public trust:

Provided that the interest or income accruing from such donations or offerings in the years following that in which they were given or made shall be taken into account in calculating the gross annual income."

Amendment of section 59 of Bom. XXIX of 1950.

16. In section 59 of the said Act, in sub-section (*1*), after the brackets and words "(other than the Charity Commissioner)" the words "or the person charging or collecting dharmada" shall be inserted.

Amendment of sections 61, 64 and 85 of Bom. XXIX of 1950.

17. In sections 61, 64 and 85 of the said Act, for the words "the Schedule" the word and letter "Schedule A" shall be substituted.

Amendment of section 66 of Bom. XXIX of 1950.

18. In section 66 of the said Act, in the Table, in the entry relating to section 59 in the second column, after the brackets and words "(other than the Charity Commissioner)" the words "or by a person charging or collecting dharmada" shall be inserted.

Amendment of section 72 of Bom. XXIX of 1950.

19. In section 72 of the said Act, in sub-section (*1*)—

(*i*) for the words "whether a trust is a public trust" the words "whether a trust exists and whether such trust is a public trust" shall be substituted;

(*ii*) the words and figures "under Chapter IV" shall be deleted.

Amendment of section 77 of Bom. XXIX of 1950.

20. In section 77 of the said Act and in the marginal note thereto for the word and figures "or 48" the figures, letters and word "48, 79A or 79C" shall be substituted.

Amendment of section 79 of Bom. XXIX of 1950.

21. In section 79 of the said Act—

(*1*) in sub-section (*1*), for the words "whether or not a trust is a public trust" the words "whether or not a trust exists and such trust is a public trust" shall be substituted;

(*2*) in sub-section (*2*),

(*i*) for the words "in appeal" where they occur for the second time the words "on application" shall be substituted;

(*ii*) the word "further" shall be deleted.

Insertion of new sections 79A, 79B, 79C and 79D in Bom. XXIX of 1950.

22. After section 79 of the said Act, the following new sections shall be inserted, namely:—

Recovery of costs and expenses incurred on legal proceedings by Charity Commissioner etc.

"79A. All costs, charges and expenses incurred by the Charity Commissioner, or the Deputy or Assistant Charity Commissioner as a party to, or in connection with, any legal proceeding in respect of any public trust shall, notwithstanding anything contained in section 79B, be payable out of the property or funds of the public trust, except in cases where the liability to pay the same has been laid on any party or other person personally and the right to reimbursement under this section has been negatived in express terms.

Costs of proceedings before Courts including High Court.

79B. The costs, charges and expenses of and incidental to any suit, appeal or application to any court including the High Court under this Act shall be in the discretion of the court, which may, subject to the provisions of section 79A, direct the whole or any part of such costs, charges and expenses to be met from the property or funds of the public trust concerned or to be borne and paid in such manner and by such persons as it thinks fit.

79C. The costs, charges and expenses of and incidental to any appeal, application or other proceeding before the Charity Commissioner or the Deputy or Assistant Charity Commissioner shall be in his discretion and he shall have full power to determine by whom or out of what property or funds and to what extent such costs, charges and expenses are to be paid. Costs of proceeding before Charity Commissioner etc.

VII of 1870.

79D. Notwithstanding anything contained in the Court-fees Act, 1870, the documents described in columns 1 and 2 of Schedule B hereto shall bear a court-fee stamp of the value specified in column 3 thereof". Court-fee to be paid as prescribed by Schedule B.

23. In the Schedule to the said Act, for the word "Schedule" the word and letter "Schedule A" shall be substituted and after Schedule A so relettered the following new Schedule shall be inserted, namely:— Amendment of the Schedule to, and insertion of new Schedule in, Bom. XXIX of 1950.

"SCHEDULE B.

Section 1	Description of Document 2	Value 3
18(*1*)	Application for the registration of a public trust.	Rs. 2
22(*1*)	Report of any change or proposed change in any of the entries recorded in the register kept under section 17.	Re. 1
25(*1*)	Application of any person having interest in a public trust to the Charity Commissioner to determine which of the Deputy or Assistant Charity Commissioners shall proceed with an inquiry under section 19 or 22 in regard to any public trust.	Rs. 2
29	Application by the executor of a will for the registration of a public trust created by such will.	Rs. 2
36	Application for sanction of the Charity Commissioner for alienation of immovable property of a public trust.	Rs. 10
44	Application by the author of a public trust to the Charity Commissioner for his consent to act as trustee of the public trust.	Rs. 10
45	Application by a person intending to create a public trust to the Charity Commissioner for his consent to act as trustee of such trust.	Rs. 10
46	Communication by the executor of a will of a testator or the administrator of his estate notifying to the Charity Commissioner the contents of the will under which he has been appointed a trustee.	Rs. 10

Section	Description of Document	Value
1	2	3
47(*1*)	Application to the Court by the Charity Commissioner or any person having interest in a public trust for the appointment of a new trustee.	Rs. 10
47(*6*)	Appeal to the High Court from the decision of the court in application filed under sub-section (*1*) of section 47.	Rs. 10
51(*1*)	Application to the Charity Commissioner for consent to file a suit of the nature specified in section 50.	Rs. 10
59(*3*)	Appeal to the State Government against the order of the Charity Commissioner for the payment of contribution by a bank or person from the moneys standing to the credit of the public trust with such bank or person.	Rs. 10
70(*1*)	Appeal to the Charity Commissioner against the finding of Deputy or Assistant Charity Commissioner under section 20, 22 or 28 or order under sub-section (*3*) of section 54.	Rs. 10
71(*1*)	Appeal to the Bombay Revenue Tribunal against the decision of the Charity Commissioner refusing consent to the institution of a suit.	Rs. 10
72(*1*)	Application to the court against the decision of the Charity Commissioner under section 40, 41 or 70 or on the question whether a trust exists and whether such trust is a public trust or whether any property is the property of such trust.	Rs. 10
72(*4*)	Appeal to the High Court against the decision of the Court under sub-section (*2*) of section 72.	Rs. 10
	Mukhtarnama or Wakalatnama when presented for the conduct of any inquiry, appeal or other proceeding to the Charity Commissioner, or the Deputy or Assistant Charity Commissioner.	Re. 1
	Any other application or petition presented to the Charity Commissioner or the Deputy or Assistant Charity Commissioner.	Re. 1

Government of Bombay

LEGAL DEPARTMENT

[L. A. BILL No. XXI OF 1951.]

(As read for the third time and passed by the Legislative Assembly on the 29th March 1951.)

(As read for the third time and passed by the Legislative Council on the 30th March 1951.)

A Bill to amend the Bombay Public Trusts Act, 1950.

[Shri D. N. Desai, M.L.A.]

M.O.I Bk Hb 10—2

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Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART IV

Acts of the Bombay Legislature and Ordinances promulgated and Regulations made by the Governor.

CONTENTS.

	Pages
BOMBAY ACT No. XIV OF 1951—An Act to amend the Bombay Public Trusts Act, 1950	50-55

The following Act of the Bombay Legislature having been assented to by the Governor on the 20th April 1951, is hereby published for general information.

J. R. DHURANDHAR,
Secretary to the Government of Bombay,
Legal Department.

BOMBAY ACT No. XIV OF 1951.

(First published, after having received the assent of the Governor, in the "Bombay Government Gazette" on the 24th April 1951).

An Act to amend the Bombay Public Trusts Act, 1950.

WHEREAS it is expedient to amend the Bombay Public Trusts Act, 1950, for the purposes hereinafter appearing; It is hereby enacted as follows :—

1950.

1. This Act may be called the Bombay Public Trusts (Amendment) Act, 1951. Short title.

Bom. XXIX of 1950.

2. In section 2 of the Bombay Public Trusts Act, 1950 (hereinafter referred to as the said Act), in clause (13) after the words "a wakf", the words "a dharmada" shall be inserted. Amendment of section 2 of Bom. XXIX of 1950.

3. For section 4 of the said Act, the following shall be substituted, namely :— Amendment of section 4 of Bom. XXIX of 1950.

"4. The Charity Commissioner shall be a person,— Qualifications for appointment of Charity Commissioner.

(*a*) who is holding or has held a judicial office not lower in rank than that of a District Judge or a Judge of the Bombay City Civil Court, or the Chief Judge of the Presidency Small Cause Court, or

(*b*) who has been for not less than ten years,—

(*i*) an advocate enrolled under the Indian Bar Councils Act, 1926, XXXVIII of 1926.

(*ii*) an attorney of a High Court, or

(*iii*) a pleader enrolled under the Bombay Pleaders Act, 1920." Bom. XVII of 1920.

Amendment of section 5 of Bom. XXIX of 1950.

4. In section 5 of the said Act, for sub-section (*2*) the following shall be substituted, namely :—

"(*2*) A person to be appointed as a Deputy or Assistant Charity Commissioner shall be a person—

(*a*) who is holding or has held a judicial office not lower in rank than that of a Civil Judge (Senior Division) or a Judge of the Bombay City Civil Court or of the Presidency Small Cause Court, or

(*b*) who has been for not less than seven years,— XXXVIII of 1

(*i*) an advocate enrolled under the Indian Bar Councils Act, 1926,

(*ii*) an attorney of a High Court, or

(*iii*) a pleader enrolled under the Bombay Pleaders Act, 1920." Bom. XVII of 1920.

Amendment of section 18 of Bom. XXIX of 1950.

5. In section 18 of the said Act, to sub-section (*2*), the following shall be added at the end, namely :—

"or the trust property or substantial portion of the trust property is situated, as the case may be."

Amendment of section 19 of Bom. XXIX of 1950.

6. In section 19 of the said Act, for clause (*i*), the following shall be substituted, namely :—

"(*i*) whether a trust exists and whether such trust is a public trust,"

Amendment of sections 21 and 22 of Bom. XXIX of 1950.

7. In sub-section (*1*) of section 21 and in sub-section (*3*) of section 22 of the said Act, after the word "appeals" the words "or applications" shall be inserted.

Amendment of section 28 of Bom. XXIX of 1950.

8. In section 28 of the said Act, in sub-section (*1*)—

(*i*) for the words "the Schedule" the word and letter "Schedule A" shall be substituted ; and

(*ii*) for the words "the trust property or the substantial portion of the trust property is situate" the words "a public trust had been registered under any of the said enactments" shall be substituted.

Amendment of section 29 of Bom. XXIX of 1950.

9. In section 29 of the said Act,—

(*i*) after the words "testator's death" the words "whichever is earlier" shall be inserted, and

(*ii*) the following proviso shall be added at the end, namely :—

"Provided that the period prescribed herein for making an application for registration may, for sufficient cause, be extended by the Deputy or Assistant Charity Commissioner concerned."

Amendment of section 33 of Bom. XXIX of 1950.

10. In section 33 of the said Act, in sub-section (*2*), for the words and figures beginning with the words "who is the holder of certificate" and ending with the words "as auditors of companies" the words and figures "who is a chartered accountant within the meaning of the Chartered Accountants Act, 1949" shall be substituted. XXXVIII of 1949.

11. In section 44 of the said Act, in sub-section (*1*), for the word "or" where it occurs for the first time, the word "and" shall be substituted. Amendment of section 44 of Bom. XXIX of 1950.

12. In section 46 of the said Act,— Amendment of section 46 of Bom. XXIX of 1950.

(*i*) for the word "after" the words ", within a period of three months from the date of" shall be substituted; and

(*ii*) the following proviso shall be added at the end, namely:—

"Provided further that where, under any law for the time being in force, no probate or letters of administration are necessary for the administration of the estate of the testator, the executor or administrator, as the case may be, shall notify the contents of the will within the period of three months from the time when the contents of the will became known to him."

13. To section 52 of the said Act, the following proviso shall be added, namely:— Amendment of section 52 of Bom. XXIX of 1950.

"Provided that if on the date of the application of the Act to any public trust any legal proceedings in respect of such trust are pending before any court including the High Court to which the Advocate General or the Collector exercising the powers of the Advocate General is a party, the Charity Commissioner shall be deemed to be substituted in those proceedings for the Advocate General or the Collector, as the case may be, and such proceedings shall be disposed of by such Court."

14. In section 54 of the said Act,— Amendment of section 54 of Bom. XXIX of 1950.

(*i*) in sub-section (*1*), after the words "so charged or collected" the brackets and words "(in this Act called—"dharmada")" shall be inserted;

(*ii*) after sub-section (*3*), the following shall be added, namely:—

"(4) The provisions of Chapter IV shall not apply to dharmada."

15. In section 58 of the said Act,— Amendment of section 58 of Bom. XXIX of 1950.

(*1*) for the proviso the following shall be substituted, namely:—

"Provided that the contribution prescribed under this section shall,—

(*i*) in the case of a dharmada, be fixed at rates in proportion to the gross annual collection or receipts of the dharmada;

(*ii*) in the case of other public trusts, be fixed at rates in proportion to the gross annual income of such public trust."

(*2*) after the proviso so substituted, the following Explanation shall be added, namely:—

"*Explanation.*—For the purposes of this section, the gross annual income shall include gross income from all sources in a year excluding donations given or offerings made with a specific direction that they shall form part of the corpus of the public trust:

Provided that the interest or income accruing from such donations or offerings in the years following that in which they were given or made shall be taken into account in calculating the gross annual income."

Amendment of section 59 of Bom. XXIX of 1950.

16. In section 59 of the said Act, in sub-section (*1*), after the brackets and words "(other than the Charity Commissioner)" the words "or the person charging or collecting dharmada" shall be inserted.

Amendment of sections 61, 64 and 85 of Bom. XXIX of 1950.

17. In sections 61, 64 and 85 of the said Act, for the words "the Schedule" the word and letter "Schedule A" shall be substituted.

Amendment of section 66 of Bom. XXIX of 1950.

18. In section 66 of the said Act, in the Table, in the entry relating to section 59 in the second column, after the brackets and words "(other than the Charity Commissioner)" the words "or by a person charging or collecting dharmada" shall be inserted.

Amendment of section 72 of Bom. XXIX of 1950.

19. In section 72 of the said Act, in sub-section (*1*)—

(*i*) for the words "whether a trust is a public trust" the words "whether a trust exists and whether such trust is a public trust" shall be substituted;

(*ii*) the words and figures "under Chapter IV" shall be deleted.

Amendment of section 77 of Bom. XXIX of 1950.

20. In section 77 of the said Act and in the marginal note thereto for the word and figures "or 48" the figures, letters and word "48, 79A or 79C" shall be substituted.

Amendment of section 79 of Bom. XXIX of 1950.

21. In section 79 of the said Act—

(*1*) in sub-section (*1*), for the words "whether or not a trust is a public trust" the words "whether or not a trust exists and such trust is a public trust" shall be substituted;

(*2*) in sub-section (*2*),

(*i*) for the words "in appeal" where they occur for the second time the words "on application" shall be substituted;

(*ii*) the word "further" shall be deleted.

Insertion of new sections 79A, 79B, 79C and 79D in Bom. XXIX of 1950.

22. After section 79 of the said Act, the following new sections shall be inserted, namely:—

Recovery of costs and expenses incurred on legal proceedings by Charity Commissioner etc.

"79A. All costs, charges and expenses incurred by the Charity Commissioner, or the Deputy or Assistant Charity Commissioner as a party to, or in connection with, any legal proceeding in respect of any public trust shall, notwithstanding anything contained in section 79B, be payable out of the property or funds of the public trust, except in cases where the liability to pay the same has been laid on any party or other person personally and the right to reimbursement under this section has been negatived in express terms.

Costs of proceedings before Courts including High Court.

79B. The costs, charges and expenses of and incidental to any suit, appeal or application to any court including the High Court under this Act shall be in the discretion of the court, which may, subject to the provisions of section 79A, direct the whole or any part of such costs, charges and expenses to be met from the property or funds of the public trust concerned or to be borne and paid in such manner and by such persons as it thinks fit.

79C. The costs, charges and expenses of and incidental to any appeal, application or other proceeding before the Charity Commissioner or the Deputy or Assistant Charity Commissioner shall be in his discretion and he shall have full power to determine by whom or out of what property or funds and to what extent such costs, charges and expenses are to be paid. Costs of proceeding before Charity Commissioner etc.

VII of 1870.

79D. Notwithstanding anything contained in the Court-fees Act, 1870, the documents described in columns 1 and 2 of Schedule B hereto shall bear a court-fee stamp of the value specified in column 3 thereof". Court-fee to be paid as prescribed by Schedule B.

23. In the Schedule to the said Act, for the word "Schedule" the word and letter "Schedule A" shall be substituted and after Schedule A so relettered the following new Schedule shall be inserted, namely:— Amendment of the Schedule to, and insertion of new Schedule in, Bom. XXIX of 1950.

"SCHEDULE B.

Section 1	Description of Document 2	Value 3
18(*1*)	Application for the registration of a public trust.	Rs. 2
22(*1*)	Report of any change or proposed change in any of the entries recorded in the register kept under section 17.	Re. 1
25(*1*)	Application of any person having interest in a public trust to the Charity Commissioner to determine which of the Deputy or Assistant Charity Commissioners shall proceed with an inquiry under section 19 or 22 in regard to any public trust.	Rs. 2
29	Application by the executor of a will for the registration of a public trust created by such will.	Rs. 2
36	Application for sanction of the Charity Commissioner for alienation of immovable property of a public trust.	Rs. 10
44	Application by the author of a public trust to the Charity Commissioner for his consent to act as trustee of the public trust.	Rs. 10
45	Application by a person intending to create a public trust to the Charity Commissioner for his consent to act as trustee of such trust.	Rs. 10
46	Communication by the executor of a will of a testator or the administrator of his estate notifying to the Charity Commissioner the contents of the will under which he has been appointed a trustee.	Rs. 10

Section	Description of Document	Value
1	2	3
47(*1*)	Application to the Court by the Charity Commissioner or any person having interest in a public trust for the appointment of a new trustee.	Rs. 10
47(*6*)	Appeal to the High Court from the decision of the court in application filed under sub-section (*1*) of section 47.	Rs. 10
51(*1*)	Application to the Charity Commissioner for consent to file a suit of the nature specified in section 50.	Rs. 10
59(*3*)	Appeal to the State Government against the order of the Charity Commissioner for the payment of contribution by a bank or person from the moneys standing to the credit of the public trust with such bank or person.	Rs. 10
70(*1*)	Appeal to the Charity Commissioner against the finding of Deputy or Assistant Charity Commissioner under section 20, 22 or 28 or order under sub-section (*3*) of section 54.	Rs. 10
71(*1*)	Appeal to the Bombay Revenue Tribunal against the decision of the Charity Commissioner refusing consent to the institution of a suit.	Rs. 10
72(*1*)	Application to the court against the decision of the Charity Commissioner under section 40, 41 or 70 or on the question whether a trust exists and whether such trust is a public trust or whether any property is the property of such trust.	Rs. 10
72(*4*)	Appeal to the High Court against the decision of the Court under sub-section (*2*) of section 72.	Rs. 10
	Mukhtarnama or Wakalatnama when presented for the conduct of any inquiry, appeal or other proceeding to the Charity Commissioner, or the Deputy or Assistant Charity Commissioner.	Re. 1
	Any other application or petition presented to the Charity Commissioner or the Deputy or Assistant Charity Commissioner.	Re. 1

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